



What Survivors Want: Part 2 A Compensation Framework for Historic Abuses in Residential Institutions

Lundy, P. (2016, May 16). What Survivors Want: Part 2 A Compensation Framework for Historic Abuses in Residential Institutions. Ulster University.

[Link to publication record in Ulster University Research Portal](#)

Publication Status:

Published (in print/issue): 16/05/2016

Document Version

Author Accepted version

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What Survivors Want: Part Two

A Compensation Framework for Historic Abuses in Residential Institutions

Visiting Professor Kathleen Mahoney (Ulster University) & Professor Patricia Lundy (Ulster University)

Commissioned by the Panel of Experts on Redress

May 2016



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Foreword

There are obvious and compelling reasons why the newly elected Northern Ireland Executive should implement without delay a redress scheme to address the abuses inflicted on children in care homes. The legacy of child abuse is a matter of considerable public interest. Governments around the world have implemented wide-ranging redress schemes to compensate survivors. Yet in Northern Ireland redressing abuse perpetrated on the most marginalized and vulnerable children in care remain unresolved. This is deeply distressing for survivors and their families; many are getting old and are infirm. Tragically, too many have died without justice, recognition and recompense. A satisfactory explanation, or rationale, for the continued delay in implementing redress remains unclear. This is bewildering in view of Sir Anthony Hart's unprecedented public statement in November 2015 that he will recommend compensation¹. Continued delay would be a stain on the international reputation of Northern Ireland.

This report seeks to contribute positively to dialogue, policy formulation and speedy resolution of the redress debate. It is the second of two reports commissioned by the Panel of Experts on Redress; a survivor-driven process². The Panel is made up of individual survivors, survivor groups, human rights experts, academics, lawyers, psychologists, accountants and international redress experts. The report sets out a detailed framework for a tailor-made out-of-court redress plan that will be mutually beneficial for survivors, and state and church entities. It draws on wide consultation with survivors, research and analysis of survivors' views on redress³. Our recommendations have been informed by redress schemes in other jurisdictions and examples of good practice - what worked or did not work in other countries⁴. The Panel believes that its recommendations, if implemented, would prove cost effective in comparison to the current protracted and costly litigation, which frequently re-traumatizes survivors.

In order to be successful, a redress scheme must have the participation of survivors and their representatives in the initiation, design, implementation and monitoring of the process. In this regard, we have developed guiding principles that should underpin the discussion, implementation and approach to redress⁵. These include adopting a human rights-based approach; respecting human dignity; gender equality and do no harm to survivors. The guiding principles will ensure that redress proceeds on the basis of mutual trust, fairness and respect.

Our report is timely. There is growing momentum amongst survivors that there should be immediate and tangible measures put in place to implement effective redress. The Panel of Experts on Redress encourage the state, churches and other entities that were involved in running residential institutions, to restore the dignity of survivors by responding with generosity, compassion and speed to their redress requests. No further distress should be caused by the unnecessary delay in the state's commitment and obligation to implement a redress process.

Acknowledgements

The Panel is extremely grateful to Ulster University for funding this report and launch and continued support of the project

1. http://www.hiainquiry.org/index/background-and_legislation.htm

2. The names of the expert panel are located in Appendix A

3. Professor Patricia Lundy, What Survivors Want From Redress, <http://uir.ulster.ac.uk/33766/1/Final%20March%208th%20Aspect%20Media%20-%20What%20Survivors%20Want%20From%20Redress%20%285%29.pdf>

4. Professor Patricia Lundy, Redressing Historical Institutional Abuse: International Lessons, Ulster University Seminar Report, March 28, 2015.

5. What Survivors Want From Redress, *supra*, note 3.

What Survivors Want Part Two: A Compensation Framework

I. Introduction

In October 2012, the terms of reference of the Historical Institutional Abuse Inquiry were set out in a statement to the Assembly made by the First Minister and deputy First Minister, to make recommendations and findings on the following matters.⁶

- An apology – by whom and the nature of the apology;
- Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;
- Recommendations as to an appropriate memorial or tribute to those who suffered abuse;
- The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.

The Hart Inquiry is scheduled to report to the Executive in January, 2017. Some have argued that this Report and our earlier Report⁷ on “What Survivors Want” are pre-emptive and premature. We disagree for the following reasons;

- The Hart Inquiry on November 4, 2015, after 157 days of public hearings and 392 witnesses, stated, “... what we can now say is that from the evidence we have heard so far we will recommend that there should be a scheme to award financial compensation to those children who suffered abuse in children’s homes and other institutions in Northern Ireland between 1922 and 1995. The statement goes on to say that any recommendations for a redress scheme should take into account the views of those who may be affected by such a scheme⁸.”
- Many survivors are ill and approaching the end of their lives. Dozens have already passed away without any acknowledgement or redress for the abuse they suffered as children. There could be no greater example of justice delayed is justice denied.
- The issue of redress has been before the OFMDFM for discussion since at least 2011⁹ yet no redress plan has been developed or discussed with survivors.

6 Northern Ireland Assembly, Written Ministerial Statement, 18 October 2012

<http://www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/of-fice-of-the-first-minister-and-deputy-first-minister/>

7. What Survivors Want From Redress, supra, note 3. 3https://www.amnesty.org.uk/sites/default/files/what_survivors_want_from_redress.pdf

8. http://www.hiainquiry.org/index/background-and_legislation.htm

9. http://www.northernireland.gov.uk/note_of_meeting_with_norah_gibbons_and_brenda_mcveigh__tuesday_19_april_2011.pdf

In response to survivor's demands for redress to commence without delay and to facilitate access to justice, a series of meetings, workshops, roundtables and seminars¹⁰ were held, sponsored by the Ulster University, where redress was objectively discussed by many experts and survivors. An Expert Panel was then established and commissioned two reports¹¹.

On March 15, 2016, survivors launched their first Report titled, *What Survivors Want From Redress*,¹² setting out the fundamental guiding principles for redress and an outline of a voluntary redress plan. Here, we build on the first Report and set out detailed recommendations for a framework for compensation, and other forms of redress. This second Report presents a comprehensive study of a cost effective, reasonable redress plan as an alternative to civil court proceedings.

II. ASSESSING DAMAGES: THE GOALS OF COMPENSATION

Compensation means providing recompense, usually money, for loss, injury or suffering with the intent of restoring the injured party back to their pre-injury state. Although this is a rough measure and can never reflect the true impact of childhood abuse and neglect, our recommendations support compensation for the full range of injuries suffered by survivors who attended residential institutions during the time frame 1922 to 1995. We encourage the state, the churches and other entities involved in running the institutions, to restore the dignity of survivors by responding with generosity, compassion and speed to their redress requests. The amount of compensation should recognize that people were harmed, provide solace for their injuries, assist in repairing the emotional, physical and psychological damage caused by residential institutions, and provide funds for the reconstruction of survivor's lives.

Our recommendations are not only reasonable, we believe they will significantly decrease administration, procedural and litigation costs for Church entities and the state. In addition, our recommendations, if implemented, will benefit the state and all citizens of Northern Ireland because they will help mend broken relationships that have undermined survivors' ability to move towards healing.

A cost/benefit analysis that puts a value on healing and the positive health and social consequences that would follow, far outweigh the costs required to achieve them. The costs of not achieving healing are immense. Our recommendations have been informed by reparations provided to survivors in other common law jurisdictions where high levels of satisfaction as well as cost savings, were achieved. These recommendations reflect the local context and the needs of survivors in Northern Ireland as documented in the first Report.¹³

10. Redressing Historical Institutional Abuse: International Lessons, *supra* note, 4.

11. The Expert Panel inaugural meeting took place on the 9th October 2015 it comprised of survivors, academics, solicitors, barristers, psychologists, researchers and international redress and human rights experts. The main goal of the Expert Panel is to create, in a timely way, a comprehensive, credible report, which will thoroughly examine all of the relevant compensation issues and provide concrete advice and recommendations. The Canadian expert on redress Professor Mahoney resided in Belfast for several weeks to work with the panel. An extensive review of the relevant case law, historical literature, government documents and reports was undertaken as well as a review of many legislated and non-legislated compensation schemes for damages for historical institutional abuse in Canada, the Republic of Ireland, Scotland and Australia.

12. *What Survivors Want From Redress*, *supra*, note 3. The first Report was based on five workshops with over 75 survivors that explored and collated opinions of what survivors want for redress.

13. *What Survivors Want From Redress*, *supra*, note 3.

III. RECOMMENDATIONS

1. FUNDAMENTAL PRINCIPLES OF COMPENSATION

- 1.1 We recommend that the process of compensation be approached on a no-fault basis, that the state and the entities that operated the institutions should expressly acknowledge their responsibility for systemic abuse in the institutional facilities.
- 1.2 To achieve fairness and equality in the treatment of survivors and to be consistent with well-understood legal principles, we recommend that once claims are validated, the state assume liability for the harms that occurred to survivors and seek indemnification from other responsible parties.
- This recommendation is consistent with modern tort law that recognizes that more than one party may be at fault in the commission of torts and, in such cases, that liability should be apportioned among the faulty parties. Thus an injured party can sue either faulty party for 100% of the losses suffered.
 - There are many good reasons why the religious entities ought to assume their own responsibility and one can sympathize with the Executive's desire to ensure they do so. However, the goal of sharing liability ought not to be pursued to the disadvantage of survivors.
- 1.3 We recommend that a voluntary out-of-court adjudicative process should be used to validate the individual claims for compensation for abuse using inquisitorial methods of fact finding.

The current Court option for redress for historic abuses in residential institutions is problematic in several respects. Some of the most serious problems are:

- It treats survivors unequally by compensating some but not others through differential application of limitation defenses.
- It is incapable of redressing systemic harms to the survivor groups as a whole and consequently does not achieve consistency in awards for similar harms.
- It does not have the capability to award a common experience payments or interim awards.
- Its processes are vulnerable to tactical delays by defendants used to exhaust the emotional and financial resources of plaintiffs. This tactical advantage denies access to justice in many cases.
- Court processes often result in administration and legal aid costs that far exceed the compensation awards ordered.
- Court processes are not designed to take into account the intergenerational needs of the survivors and their families.
- The cost of administering settlements awarded is likely to be much higher than the amount of compensation paid, as evidenced in other jurisdictions.¹⁴

14. Bearing Point, Results of Alternative Financial Models – Indian Residential Schools, May 9, 2005, copy on file. The Expert Panel is of the view that an independent business case setting out a cost benefit analysis of court proceedings compared to the costs and benefits of an out of court process would demonstrate the viability of the Panel's proposals.

A voluntary out-of-court method would, on the other hand provide the following benefits to survivors who opt into an out of court settlement process:

- Amount to less risk than the lottery of civil litigation and a more defensible outcome for the state and other defendants.
- Provide more choice to survivors.
- Provide a more expedient and flexible process to settle claims, including a less harsh standard of proof.
- Provide more accurate methods of calculating compensation sensitive to survivors' needs.
- Result in more timely settlements.
- Provide a more economically certain solution.
- Generate a much higher degree of acceptance and satisfaction for survivors.
- Provide other forms of redress including commemoration and provision for intergenerational survivors.

1.4 We recommend that the state and the churches accept vicarious liability for the physical, sexual or severe emotional abuse of a survivor by a third party permitted on the school premises for any reason.

1.5 We recommend that the state and the churches accept vicarious liability for student-on-student sexual or physical assaults, on or off the school premises, whether or not there was actual knowledge of the assaults by the school authorities.

Violent and sexualized environments existed at the institutions because of the systemic nature of the abuse. Those who operated the institutions materially and foreseeably increased the risk of abuse of the students in its care and it ought to take responsibility for doing so whether or not it possessed actual knowledge of the abuses.

1.6 We recommend that at all stages of the process that the elderly and the sick receive preferential consideration in scheduling their applications and hearings so that their claims will be resolved at the earliest possible time.

2. CATEGORIES OF COMPENSATION

2.1 There should be two categories of compensation available to survivors – a common experience payment and compensation for cases of individual abuse.

2.2 Every survivor verified as a resident at the residential institutions listed in the Hart Inquiry remit should be entitled to a common experience payment.

- The Hart inquiry has found that systemic abuse existed in all of the institutions in his remit.¹⁵

15. Hart Inquiry pronouncement November 4, 2015 supra, note 8

- Systemic abuse identified by survivors includes inter alia denial of affection, loss of family life and parental guidance, neglect, depersonalization, denial of a proper education, forced labor, inferior nutrition and health care, and growing up in a climate of fear, apprehension, and ascribed inferiority.¹⁶
- Some of the distinctive and unique forms of harms caused by the systemic abuse include reduced self-esteem, isolation from family and breaking of family bonds, separation from siblings in care homes, loss of a reasonable quality of education, and loss of community.
- A base payment of sufficient significance should be given to each person who attended a residential institution for any length of time. In addition, an amount should be paid for each additional year or part of a year of attendance to recognize the duration and accumulation of harms over time.¹⁷
- No hearing or adjudication will be required for the common experience payment. Cheques should be issued quickly and efficiently through normal administrative processes and with verification calculated strictly on the basis of care home records.
- To access the common experience payment, the application form should ask for proof of the survivor's identity, address, the name of the institution attended and the number of years attended.
- The state should provide all the necessary documents from their files to verify attendance so the survivors will be relieved of this sometimes onerous and time-consuming task.
- A standard base payment should be agreed for legal advice on accessing the common experience payment. (See discussion at 7.1 for further recommendations on legal fees.)
- The common experience payment should be made irrespective of whether survivors suffered from individual harms generated by acts of sexual, physical or severe emotional abuse.

16. In the two most recent judgments in this jurisdiction in relation to claims for historic abuse the respective judges stated that they were satisfied that the individuals had suffered physical and mental abuse in the institutions concerned, but did not in fact award those sums to be paid to the survivors on the basis that the claims had been brought outside the statutory limitation period. See *Irvine v Sisters of Nazareth* [2015] NIQB 94 - <http://www.bailii.org/nie/cases/NIHC/QB/2015/94.html> and *McKee v Sisters of Nazareth* [2015] NIQB 93 - <http://www.bailii.org/nie/cases/NIHC/QB/2015/93.html>. In *McKee v Sisters of Nazareth* the judge concluded, "[25] I consider that overall he suffered some modest physical soft tissue injuries and emotional upset consequent upon the fear of what would happen to him if he wet his bed. I consider that Dr Sheehan is correct given my findings of fact and that the plaintiff did not suffer a childhood emotional disorder as a result of any tortious activity on the part of the defendants. I do not consider that his alcoholism or his subsequent psychological or psychiatric difficulties or employment problems or matrimonial upsets can be attributed to his short stay at Nazareth Lodge. In the light of my findings of low level physical abuse and upset, the proper award of damages lies in the range of between £5,000/ £7,500. In the circumstances if I had found that the plaintiff's claim was not statute barred, I would have awarded him £6,500." It must be noted that this was in the context of a claim which arose from a period of less than 2½ months in care at Nazareth Lodge.

17. The expert panel is concerned that the acceptance of the concept of the common experience payment and its method of calculation based on a functional approach be a priority and that the amount of the lump sum be the subject of future negotiation. However, the sum the panel sees as being reasonable and fair that should serve as a reference point is £10,000 for every student who resided in a residential institution plus an additional £3,000 for every year attended.

- In the case of intestate deceased survivors, the common experience payment should be awarded to surviving family members if the application was made after an agreed upon date of eligibility. Proof requirements are the same as if the survivor was living.
- Where a survivor has already received a judgment for damages from a Court for abuse in a residential institution, they should be able to apply for a common experience payment providing that they were not compensated for the type of injuries covered by the common experience payment.

2.3 There should be a right to appeal to have a common experience payment reviewed. The review panel should be comprised of representatives of the parties. The survivors should have a further right of appeal to the courts on grounds to be negotiated.

3. In addition to the Common Experience payment, survivors should have the choice of claiming additional compensation for individual acts of serious physical, sexual and severe emotional systemic abuse.

3.1 The definition of “abuse” should be the same or similar to that in the Irish compensation model¹⁸ that defined abuse as follows: “abuse” of a child means-

- (a) The willful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child;
- (b) The use of the child by a person for sexual arousal or sexual gratification of that person or another person;
- (c) Failure to care for the child which results in serious impairment of the physical or mental health of the child or serious adverse effects on his or her behavior or welfare, or
- (d) Any other act or omission towards the child that results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behavior or welfare.

- The definition of abuse for individual acts should not include the systemic abuses covered by the common experience payment, as they will be compensated separately.
- In order to qualify for compensation for individual abuse, survivors should be required to fill out an application form where they would describe what abuse happened to them in the institution they attended, what harms they experienced and what career implications followed as a result.
- To support their claims, survivors should provide medical records, incarceration records, criminal compensation records, workers compensation records, counseling records and any other records that would be relevant to their claims. All records, transcripts and other documents gathered for the hearing process should be held in confidence.
- Applications should be made as user-friendly as possible.
- In the case of deceased survivors, if an application was made and evidence taken under oath, the survivors’ representatives should be allowed to proceed with the claim on behalf of the deceased survivor.

18. s. 1(1) Residential Institutions Redress Act, 2002 http://www.rirb.ie/documents/act_13_2002.pdf

- Survivors and representatives of deceased survivors should be allowed to call witnesses to testify on their behalf at their hearing.
- Where an otherwise eligible survivor has received a judgment from a Court for damages for personal injuries in a residential institution the survivor would not be eligible for damages under the out of court process unless the damages they claim were not covered by the Court judgment.
- If the damages awarded by the Court were significantly less than those available for the same acts and harms under the out of court settlement, the survivor should be able to request a top up to his award to be commensurate with the compensation available under the out of court process.

3.2 In addition to compensation for acts of abuse, the redress scheme should include compensation for physical and mental injuries suffered as a result of the abuse, aggravation of the injuries, as well as compensation for loss of opportunity or loss of income linked to the abuse.

3.3 The definition of “injury” must be made explicit to include descriptions of physical or psychological injury and injury that has occurred in the past or currently exists. Compensation should be payable in respect of any injury that is consistent with any abuse suffered by the survivors while a survivor was in an institution.

- The form of compensation should include long-term psychological damages for survivors who might not be able to prove physical or sexual abuse, but still suffered severe emotional harm through various forms of emotional and psychological abuse. This can be emotional damage that is more complete and severe, a lasting effect from actual harm and not just a consequence.

3.4 Once the claimant proves acts of sexual or physical abuse and their injurious consequences on a balance of probability standard of proof, he or she should receive compensation. The causation standard of proof should be the plausibility standard.

3.5 Survivors should have access to a review process by another adjudicator and ultimately the Court on grounds that should be negotiated.

4. QUANTIFICATION OF THE COMPENSATION

4.1 A mathematical model should be adopted to quantify the amount of compensation to be awarded for individual acts of abuse and the harms that flow from them. This method will help to maintain sensitivity and flexibility at an individual level while providing consistency, fairness and predictability for the group as a whole.¹⁹

- The four elements to be considered in assessing the level of compensation points are the severity of the abuse, the physical and psychological injuries suffered or being suffered, psychosocial sequelae, and loss of opportunity or loss of income.
- These four separate weightings produce an overall assessment of the severity of the abuse and the injurious consequences suffered by the survivor. When they are added together, the total assessment is then put on a scale of amounts measured in pounds. Where injuries have been aggravated by particularly egregious behavior of the perpetrator, claimants should be able to claim additional compensation in the form of aggravated damages.

19. Appendix B of this report sets out point grid examples quantifying the amount of compensation that might be awarded.

- The range of compensation available should approximate that awarded to survivors of other institutional abuse redress schemes in other common law jurisdictions and in local courts.²⁰ While we recommend that compensation should be personalized it is important to compare awards for sexual abuse being awarded by the courts in other cases outside the institutional context to avoid discrimination or any appearance of discrimination.
- Adjudicators should have the discretion to award compensation over and above the scale where the acts of abuse and the injuries arising from the abuse are exceptional.
- The severity of the abuse should be evaluated on the basis of the nature and elements of the abuse, the duration of the abuse, the number of times it occurred, whether it is ongoing, the age of the victim, whether violence or coercion was involved, whether physical pain and mental suffering were associated with the abuse and the relationship of the abuser to the victim.
- Consequences of the abuse, which in some cases is life long, should be weighted more heavily than the abuse itself.
- Redress for loss of income or loss of opportunity should be assessed separately from the personal injury losses and should be comparable to Court awards of a similar nature.
- Women and men should be considered separately in the descriptions of acts of abuse and consequences of the abuses in the point-based system of calculation. Unless there is sensitivity to these gender differences, some behavior that abused and injured female children may not be recognized as such. For example, physical abuse may subject a female survivor's vulnerability to greater sexism, subsequent physical and sexual abuse by others, divorce, and lost economic opportunities than men in some cases. Infertility, fear or avoidance of sexual activity, chronic abdominal pain, exposure to miscarriages and abortions, unwanted pregnancies and other forms of gender-specific harms should be included in the list of possible harms.

4.2 We recommend that compensation awards include an amount for the cost of reasonable medical treatment (including psychiatric treatment) for past injuries and/or the cost of reasonable medical treatment for future care.

- It is of paramount concern that survivors who have suffered compensable damage receive proper future care.

5. ADJUDICATORS AND THE ADJUDICATION PROCESS

5.1 To achieve an accurate and fair assessment of the consequences of the physical, sexual and severe emotional abuses experienced by survivors, we recommend that medical or therapeutic professionals sit as one of two adjudicators on each individual claim.

- In a settlement resolution process where expert witnesses will not necessarily be called to explain medical reports and the symptoms and severity of the harms, it is essential that at least one of the adjudicators have the education and experience to evaluate, understand, and explain the medical nature of the claims, the physical, social and psychological consequences and the future care needs of the survivors.

20. The ceiling of the redress scheme in The Republic of Ireland was £300,000. In Canada the ceiling was \$525,000. In both jurisdictions in extraordinary cases, the claim could exceed the caps.

- Half of the adjudicators should be required to have a medical or therapeutic background with specialized knowledge in the fields of psychology or psychiatry with particular knowledge and understanding of child abuse. The other half of the adjudicators should be drawn from a pool of men and women who preferably have had some adjudication experience and/or legal or legally-relevant education, especially in the fields of equality, human rights, and child abuse
- Claimants should be able to choose between male or female adjudicators.

6. STATE AND CHURCH RESPONSIBILITIES

6.1 We recommend that the state refrain from taxing the awards or deducting them from any other source of funding or support or benefits the survivors may be receiving.

- Given the nature of these monies as damages for personal injuries, they should not attract tax and they should in no way be taken into account or in any way prejudicially affect benefits, including social benefits or insurance that survivors may be entitled to receive.

6.2 Survivors should be given access to health support from the state to support them in the preparation of their statements, during their hearings and after their hearings for as long as support is needed.

6.3 The state should be proactive in ensuring that all survivors have access to the compensation and redress process.

- Application forms and explanatory guides should be sent to all living survivors without the necessity of a request. The state is in the best position to initiate the process as it has all the records and contact information.
- A comprehensive publicity campaign should be undertaken by the state to notify survivors within Northern Ireland but also in the Republic of Ireland, England, Scotland, Wales and the wider diaspora where survivors are known to have emigrated or were transported from care homes.
- By taking a proactive approach, a significant burden is removed from survivors, many of whom are elderly and sick.
- The state and the churches should provide all relevant documents, including medical reports that it has a right to possess or are under its control or in its possession.
- Upon request of the claimant, the Adjudicators should be given the power to order production of documents from other sources, such as religious entities, to complete the claimant's application.
- The state should provide support for the acquisition of all expert reports or advice required to prove a claim, including medical reports.

6.4 In the interests of certainty and efficiency and in light of the aging population of survivors, we recommend that a date be set for the completion of the settlement process.

- The compensation process should have a well-publicized deadline.
- Any completion date should be firm enough to allow for certainty, but have sufficient flexibility to allow for late applications in exceptional circumstances.

7. LEGAL REPRESENTATION AND LEGAL FEES

7.1 We recommend that survivors have the choice of having legal representation for their individual claims for redress.

- A roster should be created of lawyers willing to represent survivors in their claims for individual abuse.
- In return for having their names on the roster, lawyers would promise not to charge legal fees over an agreed base payment for their advice to survivors on their eligibility and application for the common experience payment. This fee would be paid by the state.
- Where compensation is awarded to a survivor under the individual redress provisions who has been represented by a lawyer, legal fees will be paid but they would be capped at a reasonable level. Reasonable disbursements will also be paid. This fee would be paid by the state.
- It should be possible for a lawyer to charge more than the agreed capped fee paid by the state by seeking a voluntary contribution from the claimant. No fees should be permitted to exceed 30% of the total award.
- Where the fees charged exceed the agreed capped fee, adjudicators may review the fees for fairness and reasonableness.
- Adjudicators should be able to resolve disputes about the disbursements to be paid.

8. NON-MONETARY REDRESS MEASURES

8.1 We recommend that in recognition of the ongoing harms of residential care homes to survivors and their families, church entities and the state should contribute to a 'package of measures' that will adequately address the short and longer-term needs of survivors and their families.

- This would include counseling and well-being provision; memorials and memory projects; assistance with gaining access to records; repatriation; family tracing and family reunion; intergenerational support; an apology; restorative justice and establishment of a survivor participation/forum.
- The 'package of measures' is discussed in detail in the Panel's first Report.²¹

9. TEST CASE VERIFICATION

9.1 We recommend that the proposals in this report be field-tested with a representative sample of survivors, male and female, with claims in both the common experience payment category as well as in the sexual, physical and emotional abuse category.

- We also recommend that the adjudicators and legal counsel undergo the community-based training program as part of the field test.
- The field test should be organized and overseen by the Panel of Experts with the participation of government and survivor's groups.

21. What Survivors Want From Redress, *supra*, note 3.

Appendix A: Panel of Experts

Marty Adams

Marty Adams is a former resident of Rathgael Training School, now a social worker for children in care and disability services.

Denis Bradley

Denis Bradley is a former vice-chairman of the N.I Policing Board. In mid-2007 he was co-chairman, along with Sir Robin Eames, of the Consultative Group on the Past in NI.

Denise Burke

Denise Burke is a former resident of Rathgeal/Whiteabbey Training School. She is centrally involved in a cross-community grouping which is united in its goal for justice.

Michael Connolly

Michael Connolly LLB (Hons) is a survivor of clerical abuse. Founder, spokesperson and chief negotiator, for Clerical Abuse Northern Ireland. Legal researcher and mediator.

Patrick Corrigan

Patrick Corrigan is Northern Ireland Programme Director and Head of Nations & Regions at Amnesty International UK.

Cyril Glass

Survivor and former resident of Rathgael and member of SAVIA.

John Heaney

John Heaney is a former resident of Termonbacca. He has been involved in youth work; he was also a firefighter for 25 years. He is currently secretary of Survivors North West.

Susan Kemp

Susan Kemp is an independent legal adviser and a Commissioner with the Scottish Human Rights Commission.

Professor Gerry Leavey, Ulster University

Professor Gerard Leavey is Director of the Bamford Centre for Mental Health & Wellbeing, Ulster University and Clinical Lead for the Northern Ireland Clinical Research Network.

Professor Patricia Lundy, Ulster University

Patricia Lundy is Professor of Sociology at Ulster University and a core member of the Institute for Research in the Social Sciences.

Professor Kathleen Mahoney

Professor Mahoney is Visiting Professor at Ulster University. She is Professor of Law at the University of Calgary, Canada; and was Chief Negotiator for the Assembly of First Nations.

Oonagh McAleer

Oonagh McAleer is a survivor and chairperson of Birth Mothers for Justice (BMFJ).

Collette Breen

Collette is a survivor and a member of Birth Mothers for Justice (BMFJ).

Ciaran McAteer

Ciaran McAteer has been a Solicitor for 40 years and founded McAteer & Co in January 1983.

Gerry McCann

Gerry McCann is a survivor. He is chairperson of the Rosetta Trust which is a support and advocacy group for survivors of historical abuse.

Ciaran McCavana

Ciaran McCavana is a partner in Quarter Chartered Accountants Belfast; he is an expert in forensic accounting.

Jon Mc Court

Jon McCourt is a survivor; he is Chairman of Survivors (North West) based in Derry, a support, advocacy and empowerment organisation for survivors of historical institutional abuse.

Margaret McGuckin

Margaret McGuckin is a former resident of Nazareth House. She is the founder and chair of Survivors and Victims of Institutional Abuse (SAVIA).

Claire McKeegan, Associate Solicitor

Claire is Associate Solicitor with Kevin Winters & Co Solicitors. KRW LAW-LLP is one of Ireland's leading law practices. The offices in Belfast City Centre have been instructed in some of the most significant and high profile cases in this jurisdiction.

Pearse Mehigan – Solicitor, Dublin

Pearse Mehigan qualified in 1981 and has been in practice for 30 years, having established the practice in Dun Laoghaire in 1982. The firm has successfully completed over two hundred and fifty applications to the Redress Board in the Republic of Ireland.

Malachy McGowan

Malachy McGowan is a practising barrister specialising in fundamental rights who acts in some of the most high profile legacy cases and historic institutional abuse cases in this jurisdiction.

Professor Bill Rolston, Ulster University

Bill Rolston is an emeritus professor with and former director of the Transitional Justice Institute at Ulster University.

Kate Walmsley

Kate Walmsley is a former resident of Nazareth House, Bishop Street, Derry. She became involved with SAVIA for many years after meeting its Founder Margaret McGuckin.

APPENDIX B: Examples of a point grid to calculate compensation for Abuse and Harms

	Examples of Abuse Severity: Point values: 1 to 25	Compensation Points
Sex Abuse 5	<ul style="list-style-type: none"> Repeated, persistent incidents of anal or vaginal intercourse. Repeated, persistent incidents of anal/vaginal penetration with an object. 	20-25
Sex Abuse 4	<ul style="list-style-type: none"> One or more incidents of anal or vaginal intercourse. Repeated, persistent incidents of oral intercourse. One or more incidents of anal/vaginal penetration with an object. 	15-20
Sex Abuse 3	<ul style="list-style-type: none"> One or more incidents of oral intercourse. One or more incidents of digital anal/vaginal penetration. One or more incidents of attempted anal/vaginal penetration (excluding attempted digital penetration). Repeated, persistent incidents of masturbation. 	10-15
Physical Abuse	<ul style="list-style-type: none"> One or more physical assaults causing a physical injury that led to or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required. Examples include severe beating, whipping and second-degree burning 	10-15
Sex Abuse 2	<ul style="list-style-type: none"> One or more incidents of simulated intercourse. One or more incidents of masturbation. Repeated, persistent fondling under clothing. 	5-10
Sex Abuse 1	<ul style="list-style-type: none"> One or more incidents of fondling or kissing. Nude photographs taken of the Claimant. The act of an adult employee or other adult lawfully on the premises exposing themselves. Any touching of a student, including touching with an object, by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student. 	1-5
Other wrongs	<ul style="list-style-type: none"> Being singled out for physical abuse by an adult employee or other adult lawfully on the premises which was grossly excessive in duration and frequency and which caused psychological consequential harms at level 3 or higher. Any other wrongful act committed by an adult employee or other adult lawfully on the premises which is proven to have caused psychological injury consequential harms at the H4 or H5 level. 	5-25

Level of Harm	Examples of Harm Severity: Points Values: 5-60	Compensation Points
H5	Continuing seriously dysfunctional harm such as personality disorders, pregnancy resulting from a defined sexual assault or the forced termination of such pregnancy or being required to place for adoption a child resulting therefrom, self- injury, suicidal tendencies, inability to form or maintain personal relationships, chronic post-traumatic state, sexual dysfunction, or eating disorders.	45-60
H4	Harm resulting in some dysfunction. frequent difficulties with interpersonal relationships, development of obsessive-compulsive and panic states, severe anxiety, occasional suicidal tendencies, permanent significantly disabling physical injury, overwhelming guilt, self- blame, lack of trust in others, severe post-traumatic stress disorder, some sexual dysfunction, or eating disorders.	36-44
H3	Continuing detrimental impact. Evidenced by: difficulties with interpersonal relationships, occasional obsessive-compulsive and panic states, some post- traumatic stress disorder, occasional sexual dysfunction, addiction to drugs, alcohol or substances, a long term significantly disabling physical injury resulting from a defined sexual assault, or lasting and significant anxiety, guilt, self-blame, lack of trust in others, nightmares, bed-wetting, aggression, hyper-vigilance, anger, retaliatory rage and possibly self-inflicted injury.	26-35
H2	Some detrimental impact. occasional difficulty with personal relationships, some mild post-traumatic stress disorder, self-blame, lack of trust in others, and low self-esteem; and/or several occasions and several symptoms of: anxiety, guilt, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	11-25
H1	Modest Detrimental Impact. Occasional short-term, one of: anxiety, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	5-10

Additional Redress:

Aggravated Harms: Add 5-15% to Acts + Harms

- Threats
- Intimidation/ inability to complain;
- Oppression, humiliation; degradation
- Sexual abuse accompanied by violence
- Age of the victim or abuse of a particularly vulnerable child
- Failure to provide care or emotional support following abuse requiring such care
- Witnessing another student being subjected to a compensable act
- Use of religious doctrine, paraphernalia or authority during, or in order to facilitate the abuse
- Being abused by an adult who had built a particular relationship of trust and caring with the victim

Future Care	Additional Compensation (Pounds)
General – medical treatment, counselling	up to 15,000

Consequential Loss of Opportunity	Additional Compensation (Points)
Chronic inability to obtain employment	21-25
Chronic inability to retain employment	16-20
Periodic inability to obtain or retain employment	11-15
Inability to undertake/complete education or training resulting in underemployment, and/or unemployment	6-10
Diminished work capacity – physical strength, attention span	1-5

Points

Compensation Points	Compensation (Pounds)
1-10	5,000 - 10,000
11-20	11,000 - 20,000
21-30	21,000 - 35,000
31-40	36,000 - 50, 000
41-50	51,000 - 65,000
51-60	66,000 - 85,000
61-70	86,000 - 105,000
71-80	106,000 - 125,000
81-90	126,000 - 150,000
91-100	151,000 - 180,000
101- 110	181,000 - 210,000
111 - 120	211,000 - 245,000
121 or more	Up to 275,000

Proven Actual Income Loss

Where actual income losses are proven an adjudicator may make an award for the amount of such proven loss up to a maximum of \$250,000 in addition to the amount determined pursuant to the above grid, provided that compensation within the grid is established without the allocation of points for consequential loss of opportunity.

Notes

